UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JEFFREY LOREN GRAY,

Petitioner, Case No. 1:06-CV-611

v. HON. GORDON J. QUIST

THOMAS BELL,

Respondent.
_____/

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court has before it the Petitioner's objections to the Magistrate Judge's Report and Recommendation issued on September 14, 2006. In his report and recommendation, the magistrate judge concluded that the Petitioner's petitioner for habeas corpus should be dismissed for failure to raise a meritorious federal claim. In particular, the magistrate judge found that the Petitioner's argument that his sentence is contrary to clearly established federal law as determined by the United States Supreme Court in *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), was misplaced because the Sixth Amendment concerns raised in *Blakely* are not implicated by Michigan's indeterminate sentencing scheme. In addition, the magistrate judge concluded that the Petitioner's claims are not cognizable in a habeas corpus action because they are based entirely on state law. After conducting a *de novo* review of the report and recommendation, the Court concludes that the report and recommendation should be adopted by the Court.

The Petitioner objects to the magistrate judge's finding that the Sixth Amendment concerns in *Blakely* do not apply under Michigan's indeterminate sentencing scheme. The Petitioner argues that "Michigan's multi-layered statutory sentencing scheme is synonymous to the State of

Washington's multi-layered sentencing scheme." Unlike Washington's determinate sentencing scheme, Michigan's indeterminate sentencing scheme allows for judicial discretion in imposing a sentence within a statutory range. The trial court can never exceed the maximum sentence set by statute, therefore, the sentencing scheme does not run afoul of *Blakely*. *Blakely*, 542 U.S. at 304-05, 308-09, 124 S. Ct. at 2538, 2540. Because the Petitioner was sentenced under Michigan's indeterminate sentencing scheme, *Blakely* has no application in this case. *See Walton v. McKee*, No. 2:04-cv-73695, 2005 WL 1343060, at *3 (E.D. Mich. June 1, 2005).

The Petitioner also argues that the Court should reconsider its Order of November 11, 2006, denying the Petitioner's motion to amend his petition for writ of habeas corpus. As the Court explained in its Order, the Petitioner's proposed amendments are futile. They are the same claims presented in the first petition and the claims have already been addressed by the magistrate judge in his report and recommendation. Therefore,

IT IS HEREBY ORDERED that the Magistrate Judge's Report and Recommendation issued on September 14, 2006 (docket no. 3), is **APPROVED AND ADOPTED** as the Opinion of this Court.

IT IS FURTHER ORDERED that the Petitioner's motion for reconsideration (docket no. 12) is **DENIED**.

IT IS FURTHER ORDERED that the Petitioner's petition for writ of habeas corpus is **DISMISSED WITH PREJUDICE**.

This case is **concluded**.

Dated: January 19, 2007

/s/ Gordon J. Quist
GORDON J. QUIST
UNITED STATES DISTRICT JUDGE